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6 7	Attorneys for Plaintiff Jetcrete North America LP		
8	UNITED STATES DISTRICT COURT		
9	DISTRICT OF NEVADA		
10	JETCRETE NORTH AMERICA LP,		
11	Plaintiff,	Case No.	
12	vs.		
13 14	AUSTIN TRUCK & EQUIPMENT, LTD. DBA FREIGHTLINER OF AUSTIN; and DOES I-X and ROE CORPORATIONS I-X,	COMPLAINT	
15	Defendants.		
16	Plaintiff Jetcrete North America	LP ("Jetcrete") alleges as follows:	
17	PARTIES		
18	Jetcrete is a limited partner	ership formed under the laws of Nevada. Its only	
19	general partner, Jetcrete North America Holdings, Inc., is a Nevada corporation.		
20	2. Upon information and be	elief, defendant Austin Truck & Equipment, Ltd.	
21	dba Freightliner of Austin ("Freightliner") is a	corporation formed under the laws of Texas with	
22	its principal place of business in Texas.		
23	JURISDICTIO	ON AND VENUE	
24	3. Complete diversity exists	between the parties.	

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1	4. The amount in controversy exceeds \$75,000.00, exclusive of interest and	
2	costs.	
3	5. Pursuant to 28 U.S.C. § 1332(a), this Court has original jurisdiction.	
4	6. Pursuant to 28 U.S.C. § 1391(b)(2), venue is proper because a substantial	
5	part of the events giving rise to these claims occurred in Nevada.	
6	GENERAL ALLEGATIONS	
7	7. In June 2018, Jetcrete contacted Freightliner about purchasing three mixer	
8	trucks that were needed for a project that would be beginning in July 2018.	
9	8. Freightliner agreed to sell Jetcrete the three trucks for \$172,708.06 each,	
10	with a \$2,000.00 deposit for each.	
11	9. The transaction for the three mixer trucks was handled primarily through	
12	email by James Walpole, as representative for Freightliner, and Richard Miranda, as	
13	representative for Jetcrete.	
14	10. Upon information and belief, Mr. Walpole was at all relevant times a	
15	salesperson employed by Freightliner.	
16	11. On June 13, 2018, Freightliner, through its agent Mr. Walpole, sent	
17	Jetcrete wiring instructions for the \$6,000.00 total deposit for the three trucks.	
18	12. Jetcrete executed the wire for the \$6,000.00 deposit on June 13, 2018, and	
19	Freightliner, through its agent Mr. Walpole, confirmed that it received the wired money on June	
20	14, 2018.	
21	13. On June 18, 2018, Freightliner, through its agent Mr. Walpole, sent	
22	Jetcrete updated wiring instructions for the balance that was due.	
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1	14. Jetcrete executed the wire for the remaining balance of \$512,124.18 or	
2	June 19, 2018, and Freightliner, through its agent Mr. Walpole, confirmed that it received the	
3	wired money on June 20, 2018 and again on June 25, 2018.	
4	15. On June 26, 2018, Freightliner, through its agent Mr. Walpole, contacted	
5	Jetcrete to state it had not yet received the wired funds and would not release the trucks until	
6	received the funds.	
7	16. Because Jetcrete was under a strict timeline for obtaining the trucks, it	
8	wired an additional \$512,124.18 to Freightliner on June 28, 2018 so that the trucks could be	
9	delivered while the location of the first payment could be sorted out and returned to Jetcrete.	
10	17. Freightliner has not returned the additional \$512,124.18 to Jetcrete	
11	despite Jetcrete's demands that it do so.	
12	FIRST CAUSE OF ACTION	
13	BREACH OF CONTRACT	
14	18. Jetcrete and Freightliner had a valid agreement whereby Jetcrete would	
15	pay Freightliner for the trucks, and Freightliner would deliver the trucks to Jetcrete.	
16	19. Freightliner has materially breached the agreement by forcing Jetcrete to	
17	make double payments for the trucks, and not returning the additional payment to Jetcrete.	
18	20. Jetcrete has performed all of its obligations under the parties' agreement.	
19	21. As a direct and proximate result of Freightliner's material breach, Jetcrete	
20	has suffered damages.	
21	22. Jetcrete has been forced to retain counsel to pursue this action and is	
22	entitled to reasonable attorneys' fees.	
	entitled to reasonable attorneys' fees.	

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SECOND CAUSE OF ACTION

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BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

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pay Freightliner for the trucks, and Freightliner would deliver the trucks to Jetcrete.

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Freightliner owed Jetcrete a duty of good faith under the parties' 24

Jetcrete and Freightliner had a valid agreement whereby Jetcrete would

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agreement

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25. Freightliner breached that duty by performing in a manner that was

unfaithful to the purpose of the parties' agreement when it forced Jetcrete to make double

payments for the trucks and refused to return the additional payment to Jetcrete.

26. Jetcrete's justified expectations under the parties' agreement were denied.

27. As a direct and proximate result of Freightliner's breach, Jetcrete has

suffered damages.

28. Jetcrete has been forced to retain counsel to pursue this action and is entitled to reasonable attorneys' fees.

THIRD CAUSE OF ACTION

CONVERSION

29. Freightliner committed an act of dominion over Jetcrete's funds that were wired twice to Freightliner by failing to return one of the wires to Jetcrete.

30. Freightliner's failure to return the funds to Jetcrete was in denial of and inconsistent with Jetcrete's right to those funds.

- 31. Freightliner's failure to return the funds to Jetcrete was in derogation, exclusion, or defiance of Jetcrete's right to those funds.
- 32. As a direct and proximate result of Freightliner's actions, Jetcrete has suffered damages.

33. Jetcrete has been forced to retain counsel to pursue this action and is 1 entitled to reasonable attorneys' fees. 2 FOURTH CAUSE OF ACTION 3 FRAUDULENT OR INTENTIONAL MISREPRESENTATION 4 34 Freightliner, through its agent Mr. Walpole, made a false representation to 5 Jetcrete when it claimed that it had not received the wire of \$512,124.18, despite its previous 6 representations, through its agent Mr. Walpole, that it had received that wire. 7 35. Freightliner's agent Mr. Walpole either knew the representation was false 8 9 or had an insufficient basis for making the representation. 36 By making this misrepresentation to Jetcrete, Freightliner intended to 10 induce Jetcrete to wire an additional \$512,124.18 to Freightliner so that the trucks could be 11 delivered. 12 37. Jetcrete justifiably relied upon Freightliner's misrepresentation and wired 13 the additional funds to Freightliner. 14 38 As a direct and proximate result of Freightliner's misrepresentation, 15 Jetcrete has suffered damages. 16 39. Jetcrete has been forced to retain counsel to pursue this action and is 17 entitled to reasonable attorneys' fees. 18 FIFTH CAUSE OF ACTION 19 20 **UNJUST ENRICHMENT** 40. Jetcrete has conferred upon Freightliner the benefit of two payments of 21 \$512,124.18 each for the delivery of three mixer trucks. 22 23 41.

Freightliner has unjustly retained Jetcrete's wired funds, and it is

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1	42.	As a direct and proximate result of Freightliner's acts, Jetcrete has
2	suffered damages.	
3	43.	Jetcrete has been forced to retain counsel to pursue this action and is
4	entitled to reasonable attorneys' fees.	
5		SIXTH CAUSE OF ACTION
6		VICARIOUS LIABILITY
7	44.	Mr. Walpole was employed by Freightliner at the time of the events
8	described above.	
9	45.	As an employee and subordinate of Freightliner, Mr. Walpole was subject
10	to Freightliner's control at the time of the events described above.	
11	46.	Mr. Walpole was acting in the scope of his employment at the time of the
12	events described above.	
13	47.	As a direct and proximate result of Mr. Walpole's acts as an employee or
14	Freightliner, Jetcrete has suffered damages.	
15	48.	Jetcrete has been forced to retain counsel to pursue this action and is
16	entitled to reasonable attorneys' fees.	
17	WHE	EREFORE, Jetcrete prays for judgment as follows:
18	1.	For an award of damages in an amount to be determined at trial;
19	2.	That Jetcrete recover its reasonable costs of suit;
20	3.	That Jetcrete recover its reasonable attorneys' fees;
21	4.	For pre-judgment and post-judgment interest; and
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1	5. For such other and further relief as the Court may deem just and proper.
2	KAEMPFER CROWELL
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7	Attorneys for Plaintiff Jetcrete North America, LP
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